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SEP 22 1998

CONCORD, N.H.

Allen W. Evans
Assistant Recreation Director
Division of Recreation
State House Annex

Dear Mr. Evans:

You have asked whether the Aerial Tramway may engage boys from 12 to 16 years of age, to assist in "trail packing" for which they receive "packers tickets", or free use of the facilities. You have further asked whether there is any liability on the part of the State for injuries occurring while such boys are working on the trails.

It is the opinion of this office that engaging boys to assist in the packing of trails is to employ those boys for a consideration. R. L. c. 137, s. 13 as amended by c. 94, Laws of 1951, states that no child under the age of fourteen shall be employed, or permitted or suffered to work in any occupation, except farm or domestic labor. The purpose of the child labor law is to positively prohibit children under this age from being employed, permitted, or suffered to engage in occupations prohibited. The terms used mean that children shall neither be employed by contract, nor permitted by acquiescence, nor suffered by a failure to hinder. Curtis & Cambridge Co. v. Figg, 134 P. 1125.

R. L. c. 137, ss. 13 through 34 provide for employment certificates for children under sixteen years of age. The provisions of these sections must be complied with before it is possible to engage boys between 14 and 16.

The question of liability for injuries possibly sustained by boys otherwise eligible, depends on whether or not they are state employees. Under the Personnel Act, only temporary emergency help may be obtained without prior certification of the Personnel Department. Boys engaged to pack trails would be considered as temporary emergency help, they would be State employees, and they could recover under the provisions of R. L. c. 216, s. 4 as inserted by c. 268, Laws of 1947.

The sum and substance of the above is that the Aerial Tramway must comply with the laws relative to the employment of minors, and the laws relating to the Division of Personnel before hiring help of this nature.

Very truly yours,

ADD:W

Arthur E. Bean, Jr.,
Assistant Attorney General